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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/675,467
Filing Date: September 30, 2003
Appellant(s): KARAOGUZ ET AL.

Mr. Joseph M. Butscher
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 2, 2008 appealing from the Office action mailed April 10, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0104099	Novak	8-2002
6,868,452 B1	Eager et al.	3-2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 9-17, 19-27, 29, and 30-31 are rejected under 35 U.S.C 102(e) as being anticipated by Novak (US Patent Application Publication 2002/0104099), hereinafter Novak.

In reference to claims 1 and 21, Novak teaches a method of and processor for programming media content in a distributed media network (using STB 152 executing the method of Figure 11 as described in Paragraphs 0078-0080), said method and processor operation comprising: selecting (by way of remote control button 174 described in Paragraph 0073 Lines 7-10) at least one customized media channel established by a user ("synthetic channel" described in Paragraph 0069 Lines 6-10; as displayed in EPG 152 during step 1112) based on at least one input from said user; identifying one or more of media, data and/or service (Figure 5 interface 506 as described in Paragraph 0061 Lines 5-8) for said selected at least one customized media channel; and presenting, at a first geographic location (upload source 122, as described

in Paragraph [56]) directly in said at least one customized media channel, said identified one or more of media, data and/or service (see interface of Figure 7 described in Paragraphs 0064 Lines 1-10), wherein said media channel may be pushed from said first geographic location to a second geographic location (step 1104 to step 1110 of Figure 11, as described in Paragraphs [78]-[80] and with further reference to Paragraph [75] describing operations of "second location" STB 152).

In reference to claims 2 and 22, Novak teaches a method of and processor for displaying said identified one or more of media, data and/or service in a channel view (Figure 9 as described in Paragraph 0074 Lines 1-7) corresponding to said at least one customized media channel (Figure 9 "Joe's TV Channel" described in Paragraph 0073 Lines 7-13).

In reference to claims 3 and 23, Novak teaches a method of and processor for scheduling said display of said identified one or more of media, data and/or service (by way of "time slots" of Figure 7 described in Paragraph 0064 Lines 10-15) in said channel view corresponding to said at least one customized media channel.

In reference to claims 4 and 24, Novak teaches a method of and processor for updating (as updated by web site 124 described in Paragraph 0083 Lines 7-12) said display with newly available one or more of media, data and/or service (as made available by upload source 122 described in Paragraph 0081) in said channel view corresponding to said at least one customized media channel.

In reference to claims 5 and 25, Novak teaches a method of and processor for transferring said identified one or more of media, data and/or service to said at least one

customized media channel (see flow diagram block 408 as described in Paragraph 0060).

In reference to claims 6 and 26, Novak teaches a method of and processor for selecting said identified one or more of media, data and/or service from a third party (shown as upload source 222 referenced in Paragraph 0043).

In reference to claims 7 and 27, Novak teaches a method of and processor for transferring (from upload source 222 as described in Paragraph 0043 Lines 1-3) said selected one or more of media, data and service from a storage associated with said third party (web site 224 server as described in Paragraph 0043 Lines 3-4) into said at least one customized media channel (a method of "uploading" is described in Paragraph 0062 Lines 1-8).

In reference to claims 9 and 29, Novak teaches a method of and processor for receiving said selection of said identified one or more of media, data and service (at STB 152 as described in Paragraph 0028 Lines 3-7) based on one or both of a device view (interface 506 described in Paragraph 0061 Lines 4-13) and/or a media view (interface 702 as described in Paragraph 0063 Lines 7-16).

In reference to claims 10 and 30, Novak teaches a method of and processor for controlling said presentation of said identified one or more of media, data and/or service from a graphical user interface corresponding to a channel view (see EPG 802 "controlling" aspects as described in Paragraph 0071).

In reference to claims 11-17 and 19-20, Novak teaches a machine-readable storage (described in Paragraph 0077 Lines 1-10) having stored thereon, a computer

program having at least one code section for programming media content in a distributed media network (using “token” program described in Paragraph 0058 Lines 1-10), the at least one code section being executable by a machine (STB 152 described in Paragraph 0077 Lines 10-14) for causing the machine to perform the method of claims 1 through 10, as rejected above.

In reference to claim 21, Novak teaches a system for programming media content in a distributed media network (shown in Figure 3 described in Paragraph 0045).

In reference to claim 31, Novak teaches a processor that is a media processing system processor (Paragraph 0085 describing the STB 152 executing flow diagram block 1114).

Claims 8, 18, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novak (US Patent Application Publication 2002/0104099) in view of Eager et al. (6,868,452) herein referred to as Eager.

Novak does not disclose a method of queuing prior to the transfer of media content based on bandwidth usage, delivery cost, or delivery schedule.

Eager discloses a method of improving delivery of continuous media programs by using a remote server to store portions of the program that cannot be immediately transmitted to the end-user. The server transmits the media programs based on the costs of storing (Col 5 Line 4), the cost of bandwidth (Col 5 Line 5), and delivery period (Col 9 Lines 15-19).

Eager discloses the desirability to reduce bandwidth costs and loads on the server associated with the storage and transmission of streaming data (Col 5 Lines 17-23). In addition, Eager further discloses the advantage of reduced delivery costs created by using a regional server cache as a media storage device. It would be advantageous to combine the system of Novak with the server of Eager due the increase in control and regulation of streaming media in the network. In addition, the use of the server of Eager would reduce the operating cost of Novak's network, and therefore the combination of the server into the network would make the network more cost effective.

In light of Eager, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the server disclosed by Eager in the media network system disclosed by Novak in order to queue data based on bandwidth usage, delivery cost, of delivery schedule.

(10) Response to Argument

The Examiner respectfully disagrees that the rejection should be reversed. Only those arguments having been raised are being considered and addressed in the Examiner's Answer. Any further arguments regarding other elements or limitations not specifically argued or any other reasoning regarding deficiencies in a prima facie case of obviousness that the Appellant could have made are considered by the Examiner as having been conceded by the Appellant for the basis of the decision of this appeal. They are not being addressed by the Examiner for the Board's consideration. Should the

panel find that the Examiner's position/arguments or any aspect of the rejection is not sufficiently clear or a particular issue is of need of further explanation, it is respectfully requested that the case be remanded to the Examiner for further explanation prior to the rendering of a decision.¹

Discussion of Rejections of independent Claims 1, 11, and 21 under 35 USC 102(b) as being anticipated by Novak.

Appellant presents that Novak does not describe, teach, or suggest at least the limitation of "wherein said media channel may be pushed from said first geographic location to a second geographic location" (with reference to Appeal Brief Page 7 Lines 9-12; and Claims 1, 11, and 21).

The Examiner has submitted Specification Paragraph [55] of the instant application (i.e., Page 18, Lines 4-7) as the most exemplary passage demonstrating the intended meaning of the word "push":

"The media exchange network allows users to effectively become their own broadcasters from their own homes by creating their own media channels and pushing those media channels to other authorized users on the media exchange network..." (Page 18 Paragraph [55])

The Examiner has interpreted, in light of the Specification Paragraph [55] of the instant application, the claim language: "channel [that] may be pushed" to mean providing a path of access through the network ('authorized users' of Specification) in order to display a list of available media ('user created media channels' of Specification) to a receiving user in a similar manner to broadcast television ('become their own broadcasters' of Specification) (with reference to Appeal Brief Page 7 Line 13 to Page 8

¹ See 37 CFR 41.50(a)(1) and MPEP 1211.

Line 6; and April 10, 2008 Office Action Page 4 Lines 1-11). In other words, it is the Examiner's position that Specification Paragraph [55] demonstrates that users "becoming their own broadcasters" (i.e. broadcasting) is equivalent to the act of "pushing" media channels because a user can create their own media channel (i.e. determine date and time of broadcast, which traditionally only the broadcaster has control over) and distribute this media channel to other authorized users in accordance with the broadcast schedule (i.e. dictating when the end user has access to the channel).

The Examiner further submits the following definition, as an example of the ordinary meaning at the time of the invention, of the word "push":

(1) In client/server applications, to send data to a client without the client requesting it. The World Wide Web is based on a *pull* technology where the client browser must request a Web page before it is sent. Broadcast media, on the other hand, are push technologies because they send information out regardless of whether anyone is tuned in.

Increasingly, companies are using the Internet to deliver information push-style. Probably the oldest and most widely used push technology is e-mail. This is a push technology because you receive mail whether you ask for it or not -- that is, the sender *pushes* the message to the receiver. (webopedia.com²)

The Examiner particularly points out the association of the words "broadcast media" with "push technologies" in the above definition. In addition, it is the Examiner's position that the above definition is in accordance with exemplary Specification Paragraph [55] and the Examiner's interpretation of Appellant's intended use for the word "push." Furthermore, the Examiner notes that the above reference also identifies a difference between the words "push" and "pull", wherein "pull technologies" are characterized in that a "client browser must request", and wherein "push technologies" are characterized

² www.webopedia.com, "Push", Jupitermedia Corporation, January 25, 2002. Accessed December 1, 2008 <<http://web.archive.org/web/20020913072841/http://www.webopedia.com/TERM/p/push.html>>.

in that "they send information out regardless of whether anyone is tuned in" or "without the client requesting it." With these definitions in mind, the Examiner will now address the teachings of Novak.

Appellant presents (Appeal Brief Page 9 Lines 5-8) that no assertion is made "that Novak does not teach first and second geographic locations" and therefore the Examiner will not address these aspects of Novak. Appellant does however assert that Novak does not teach "wherein said media channel may be pushed" because "Novak discloses that media can be uploaded to a server and a network provider may communicate the uploaded media to an end user." Appellant further presents that Paragraph [0056] of Novak teaches that "video clips, as opposed to a media channel, are uploaded to a web site by an upload source" (Novak Paragraph [0056] and Fig. 4; and Appeal Brief Page 9 Line 12 to Page 10 Line 1).

The Examiner has previously presented (April 10, 2008 Office Action Page 10 Lines 13-16) that Novak teaches Appellant's Claim 1, 11, and 21 limitation "wherein said media channel may be pushed..." (with reference to Step 1104 to Step 1110 of Figure 11, as described in Paragraphs [0078]-[0080] and with further reference to Paragraph [0075] describing operations of "second location" STB 152).

With reference to Steps 1104 and 1106 Fig. 11 ("Upload Media Objects" and "Organize Media Objects into Media Program(s)"), Upload Source 122 provides access to information related to the media objects by way of Interface 702 of Figure 7 for the creation of "Joe's TV Channel" (which Novak also identifies as a 'synthetic channel' and 'TCP/IP channel'), as Novak disclosed in Paragraphs [0078] and [0068]; with further

reference to Paragraphs [0064-0070]. Similarly, Upload Source 122 can use Interface 506 of Fig. 6 to create a program schedule by specifying the air time, the duration, and the repetition frequency in which the various media objects are presented to the end user, as Novak described in Paragraph [0062]. In Step 1108 of Fig. 11 ("Link Uploaded Media Objects into Media Program(s)"), the user created media channel is associated with a broadcast Provider 108 for distribution to the end-user, as Novak describes in Paragraph [0079].

In Step 1110 of Fig. 11 ("Subscribe End User"), the 'synthetic channel' is presented to the end-user, wherein the end-user is subscribed to the media channel and provided access to the EPG 153, as Novak discloses in Paragraph [0080]. The Examiner notes that "Joe's TV Channel" 908 is presented to the end-user in EPG 153 of Figure 9 according to the schedule established by Upload Source 122 in Step 1104, as Novak discloses in Paragraph [0075]. In particular, Novak discloses that "EPG data can include the media program settings specified by the Upload Source 122 using the Interface 702 of Fig. 7" as described in Paragraph [0083]. Novak describes that media within a synthetic channel, such as "Joe's TV Channel" 908 of Figure 9, "can be scheduled for replay or repeat..." and "[t]he replay can be scheduled explicitly by the individual, or done automatically by software of the Interface 702" see Paragraph [0064]. In addition, Novak discloses:

In this manner, the playing of the media objects on the TCP/IP channel appears similar to a normal television channel to the end user. That is, Joe's TV Channel is a personal channel that can be provided to and selected by end users, and the end users can tune to the uploaded media program(s) accessible via this channel and view them similarly to regular television programming. (Novak Paragraph [0069])

In other words, an individual at Upload Source 122 has complete control over the nature in which the media is presented to the end-user. In both Figures 6 and 7, the uploading user determines program aspects such as the time, the date, the channel, the duration, and the repetition frequency in which the media channel is presented to the end user in EPG 153 of Figure 9. The Examiner notes that Novak's Figure 9 is in accordance with Figure 6 of the instant application, which the Appellant has provided as support for the "customized media channel" limitation (with reference to Appeal Brief Page 3, Footnote #5).

In view of the above teachings, the Examiner submits that Novak clearly demonstrates a "customized media channel" in the form of Joe's TV Channel 908 of Figure 9. In addition, the Examiner submits that the Upload Source of Novak pushes the synthetic channel (i.e. Joe's TV Channel) to an end user because it is the Upload Source, not the end-user, which determines the schedule of media to be presented. The Examiner also submits that the definition of "push", as equated above to television broadcasting, is in accordance with Novak's teachings of a synthetic channel that can be provided to and selected by end-users similarly to regular television programming. It is noted that this interpretation of Novak's 'synthetic channel' is in accordance with the interpretation presented by the Appellant (Appeal Brief Page 11 Lines 7-13).

In view of the above reasoning, the Examiner submits the Novak does in fact teach the limitation "wherein said media channel may be pushed from said first location to a second geographic location" as recited in Appellant's Claims 1, 11, and 21.

Discussion of Rejections of Claims 2-7, 9-17, 19-27 and 30-31 under 35 USC 102(b) as being anticipated by Novak.

No additional arguments are presented over and above those previously addressed. Accordingly, the rejection is believed to be proper for the previously addressed reasoning.

Discussion of Rejections of independent Claims 8, 18, and 28 under 35 USC 103(a) pertaining to Novak in view of Eager.

No additional arguments are presented over and above those previously addressed. Accordingly, the rejection is believed to be proper for the previously addressed reasoning.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Patrick A Ryan/
Examiner, Art Unit 2427

Conferees:

/Scott Beliveau/
Supervisory Patent Examiner, Art Unit 2427

/John W. Miller/
Supervisory Patent Examiner, Art Unit 2421